

Amendments to Senate Bill No. 387  
1st Reading Copy

SENATE JUDICIARY  
SENATE NO. 5  
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FILE NO. SB 387

Requested by Senator Scott Sales

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt  
March 26, 2013 (2:06pm)

1. Title, page 1, line 13.

**Following:** " ; "

**Insert:** "CLARIFYING THE STANDING REQUIREMENT FOR THE FILING OF  
ETHICS COMPLAINTS ;"

**Following:** "SECTIONS"

**Insert:** "2-2-136,"

2. Page 2.

**Following:** line 28

**Insert:** "Section 4. Section 2-2-136, MCA, is amended to read:

**"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices if the person has standing to file the complaint. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint when the person who filed the complaint has failed to demonstrate standing or may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2,

chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(d) A person has standing to allege a violation when the person:

(i) alleges a past, present, or threatened injury to a property right or a civil right; and

(ii) alleges an injury that is distinguishable from an injury to the public generally, although the injury does not need to be exclusive to the person alleging the injury.

(2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.

(b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the

responsibilities and duties assigned by this part."

{ Internal References to 2-2-136:

2-2-103x          2-2-103 x          2-2-144x          2-2-144x }"

**Renumber:** subsequent sections

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